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Montana Explores a New Approach to Regulating Pharmacy Benefit Managers

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State legislatures across the country continue efforts to address the opaque business practices of pharmacy benefit managers (PBMs) to protect consumers and lower prescription drug prices. Montana is taking a new approach by leveraging its insurance department's regulatory authority over insurance carriers by proposing a bill that tasks insurers with responsibility for overseeing that PBMs distribute prescription drug rebates so that health care costs for consumers will decrease.

In 2018, 20 states enacted 33 laws to regulate PBM licensing processes, prohibit gag clauses, and limit cost-sharing for patients and the federal government followed states' lead, and enacted a national prohibition on PBM gag clauses. Even though most state legislative 2019 sessions have just begun, lawmakers in over 25 states have already introduced more than 70 PBM regulation bills.

To date, most state legislation directly regulate PBMs, including the National Academy for State Health (NASHP) [model PBM legislation \(https://www.nashp.org/wp-content/uploads/2019/02/Updated-MODEL-A-PBM-legislation-1_31_2019.pdf\)](https://www.nashp.org/wp-content/uploads/2019/02/Updated-MODEL-A-PBM-legislation-1_31_2019.pdf), which does not specify which state agency should oversee PBMs, but does establish a fiduciary duty for PBMs to insurers. In an alternative approach, Montana's [proposal \(https://leg.mt.gov/bills/2019/billpdf/SB0071.pdf\)](https://leg.mt.gov/bills/2019/billpdf/SB0071.pdf) specifies its Insurance Department as the lead agency to leverage its regulatory authority over insurers to oversee PBMs and ensure rebates shared within the prescription drug supply chain result in consumer savings. The bill prohibits the

practice of spread pricing, which occurs when a PBM reimburses a pharmacy for less than they charged the health plan for a drug and retains the difference. Under Montana’s bill, insurers would receive all of the rebates that PBMs receive from drug manufacturers, and insurers would be required to use those savings to lower out-of-pocket costs for their enrollees.

The measure also prohibits insurers from retroactively denying or reducing a claim payment to a pharmacy, unless the claim was submitted fraudulently. The bill also requires Insurers to review and update the maximum allowable cost list (a payer-generated list of products that includes the upper limit or maximum amount that a plan will pay for generic drugs and brand-name drugs that have generic equivalents available) once every 10 days and provide the list to the insurance commissioner and each provider in the pharmacy network. This [chart \(https://www.nashp.org/wp-content/uploads/2019/02/PBM-NASHP-Model-A-and-MT-bill-side-by-side-final.pdf\)](https://www.nashp.org/wp-content/uploads/2019/02/PBM-NASHP-Model-A-and-MT-bill-side-by-side-final.pdf) offers a side-by-side provision comparison between Montana’s bill and NASHP’s model legislation.

Montana’s [Commissioner \(https://csimt.gov/insurance/\)](https://csimt.gov/insurance/) of Securities and Insurance believes this approach will withstand any potential challenges from the pharmaceutical industry and serve as a model for other states. “Senate Bill 71 is a uniquely Montana approach that we’re encouraging other states to adopt as well,” said Kris Hansen, the insurance commissioner’s chief legal counsel.

Using Montana’s proposed bill, NASHP has developed a second **PBM model act** (<https://www.nashp.org/wp-content/uploads/2019/02/NASHP-PBM-Model-Act-B-022019.pdf>) that other states can adapt if they want to take Montana’s approach and leverage the state’s insurance department’s oversight authority. Explore NASHP’s [Center for State Rx Drug Pricing \(https://www.nashp.org/center-for-state-rx-drug-pricing/\)](https://www.nashp.org/center-for-state-rx-drug-pricing/) for other model legislation that can help states address drug prices, including drug affordability review (rate setting), manufacturer drug price transparency, and wholesale drug importation.

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